

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
ALBERTO JUAREZ,)	CASE NO. 09-24476 JPK
)	Chapter 7
Debtor.)	

ORDER FOR HEARING

On April 20, 2012, the court conducted a hearing pursuant to its record #35 order, with respect to the record #34 Notice filed by the Chapter 7 Trustee with respect to the alleged default by the debtor with respect to the terms of an agreed order entered on May 12, 2010. The Chapter 7 Trustee Kenneth A. Manning appeared at that hearing; the debtor did not appear. The court notes that counsel for the debtor, Attorney David Dabertin, filed a motion to withdraw as attorney for the debtor on April 16, 2012, and Attorney Dabertin did not appear at the hearing.

The purpose of the hearing was to determine whether the terms of the May 12, 2010 agreed order should be implemented. The record established by Trustee Manning is that the debtor has paid all but several hundred dollars of the amount required to be paid to the Trustee under the terms of that order; that Trustee Manning is in possession of a federal income tax refund check issued by the United States Treasury in favor of the debtor pursuant to a power of attorney provided by the debtor in accordance with the May 12, 2010 order; that the amount of the tax refund significantly exceeds the amount necessary for the debtor to complete compliance with the May 12, 2010 order; and that the debtor has revoked the power of attorney held by the Internal Revenue Service with respect to the Chapter 7 Trustee, which results in a circumstance in which the Chapter 7 Trustee cannot negotiate the tax refund check. The court notes to the debtor that because this refund check has been issued, the debtor is not going to get another check independently issued by the Internal Revenue Service to him, and that

therefore whatever amount that the debtor might be entitled to personally with respect to the income tax refund represented by the check held by the Chapter 7 Trustee will forever be money the debtor has kicked away.

At the hearing, the court made findings of fact which determined that the debtor had defaulted under the terms of the May 12, 2010 order, and that the relief requested by the Trustee in enforcement of that order would be granted. However, in reviewing the order, paragraph 7 states that the debtor's failure to comply with the order will result in denial of the debtor's discharge. The record is not as clear as it should be with respect to this stated remedy. The debtor initiated this Chapter 7 case by petition filed on October 19, 2009. A discharge was entered on January 25, 2010. The motion for turnover to which the May 12, 2010 order relates was filed by the Trustee on February 23, 2010, and the agreed order was entered in May of 2010. Thus, at the time the agreed order was entered, and in fact, at the time that all pertinent proceedings in relation to that order were initiated, the debtor had already been granted a discharge. It is thus not clear to the court whether the remedy envisioned by the parties was revocation of discharge – which would be customary under the circumstances of this case – or whether the parties actually contemplated a denial of discharge as the agreed order states. A further hearing is necessary to clarify these matters.

On the evening of April 28, 2012, the author of this order happened to watch the 1962 version of *Mutiny on the Bounty*, the one in which Marlon Brando plays the role of Fletcher Christian. As Christian is putting Captain Bligh in a small rowboat with a number of non-mutineers, Captain Bligh expresses to Fletcher Christian the price he has paid for leading the mutiny, which is that he now has no country and he will be hunted for the rest of his life by the British Navy, with the goal of hanging him. Bligh states to Christian in essence the following: "What a huge price to pay for a burst of temper." The same holds true with respect to the debtor in this matter. For reasons of his own, the debtor has apparently decided that he will not

pay another dime to the Chapter 7 Trustee, even though that decision results in his forfeiture of a not insignificant amount of money with respect to the surplus of the tax refund held by the Trustee, and quite possibly a denial of discharge in this case, which will preclude the debtor from ever discharging any debt of any creditor in this case, and will allow those creditors to hunt him for the rest of his life. As Bligh further stated to Christian: "How incredibly sad."

Many times in this court, people react in the heat of the moment and engage in conduct which they would later regret if they were able to undo their actions. Perhaps that is the case with Alberto Juarez. The court is in essence giving Mr. Juarez a chance to undo his mutiny, an opportunity which the British government would never have accorded to Fletcher Christian.

IT IS ORDERED that a hearing will be held on **June 15, 2012, at 11:00 A.M.** with respect to the matters addressed above. If the debtor appears at that hearing and cooperates with the Chapter 7 Trustee so that his obligation to the bankruptcy estate can be satisfied, the court will deem the debtor to have complied with the May 12, 2010 order, and no action will be taken with respect to the debtor's discharge. If the debtor fails to appear at the hearing and/or fails to cooperate with the Chapter 7 Trustee in negotiation of the federal income tax refund check, the court in all probability will revoke the order of discharge entered on January 25, 2010, and will then deny the debtor's discharge.

Dated at Hammond, Indiana on May 9, 2012.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee
All Creditors
All Parties-in-Interest